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**Baker v. Exxon Mobil Corp. (In re Exxon Valdez) United States
Court of Appeals for the 9th Circuit 2006 U.S. App. LEXIS 31503
(Filed December 22, 2006)**

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claims for cargo loss or damage be litigated in the United States District Court for the Southern District of New York. In January 2000, when the steel coils were subsequently loaded onto SK's vessel, the M/V Faros, in Taiwan, SK issued twelve bills of lading to Yieh Loong; the latter was designated the shipper, and the "consignee" was designated "To Order," rendering the bills negotiable. The reverse of each bill of lading contained a forum selection clause stipulating that any claim concerning goods carried under the Bills would be brought before the Seoul District Court in South Korea.

Asoma claims that, at some point after Yieh Loong delivered the steel onto the M/V Faros in Taiwan, and before the March 2000 delivery to the United States, the coils were damaged by seawater. Asoma brought suit against SK in the Southern District of New York, seeking in excess of \$140,000 in damages. Defendants moved to dismiss by reason of the South Korea forum selection clause in the bills of lading. After Asoma amended its complaint to assert its claims under the contract of charter, and to rely on that contract's forum selection clause, the defendants moved for judgment on the pleadings based on the South Korea forum selection clause. The district court ultimately dismissed the Amended Complaint, ruling that the controlling contracts of carriage were the bills of lading issued by SK to Yieh Loong. The district court concluded that the contract of charter between SK Shipping and Asoma was irrelevant, because the bills of lading were the contract of carriage.

The Court of Appeals reviewed the district court's factual findings for clear error and legal conclusions *de novo*. *Evolution Online Sys., Inc. v. Koninklijke PTT Nederland N.V.*, 145 F.3d 505, 508 (2d Cir. 1998). The Court noted that, as between a shipowner and the charterer, a bill of lading never affects the terms of a contract of charter; bills of lading operate as receipts for goods, and also as documents of title for the purpose of passing possession of the goods, but they do not operate as new contracts, or as modifying the contract of charter. *The Fri*, 154 F. 333, 336-37 (2d Cir. 1907). The Court concluded that the district court should have enforced the New York forum selection clause of the contract of charter, because SK Shipping entered into a contract with MUR London and its "nominee," Asoma, to litigate cargo claims brought under the contract in the Southern District of New York. SK Shipping could not escape that contractual commitment by issuing bills of lading containing a different forum selection clause to the shipper of the cargo. A carrier which entered into a contract of charter could not unilaterally alter the terms of its contract by issuing bills of lading containing inconsistent terms upon its receipt of the cargo.

Because Asoma was the charterer under a contract of charter made with SK as owner, Asoma was entitled to bring its claim for cargo damage in the Southern District of New York. The Court noted that the fact that the carrier's obligations would have been governed by a different contract had suit been brought under the bills of lading by a stranger to the contract of charter did not alter the fact that SK had agreed in the charter contract to be bound by its terms in disputes with the charterer.

Accordingly the Court of Appeals reversed the district court's dismissal of Asoma's suit against SK Shipping.

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COURT OF APPEALS SUBSTANTIALLY REDUCES DISTRICT COURT'S AWARD OF PUNITIVE DAMAGES IN *EXXON VALDEZ* CASE

Defendant oil company and its related shipping company sought review from a decision of the United States District Court for the District of Alaska, which imposed \$4.5 billion in punitive damages after defendants' negligence caused the oil tanker *Exxon Valdez* to run aground in Alaskan waters, resulting in a large oil spill, in 1989. The Court of Appeals for the 9th Circuit had remanded the district court's decision as to punitive damages on two previous occasions. The

district court had found defendants liable for \$513.1 million in harm, and a jury had assessed \$5 billion in punitive damages. After two appeals of the punitive damage award, the district court instituted punitive damages of \$4.5 billion. On the third appeal, the Court of Appeals vacated that award and ordered a remittitur of \$2 billion, reducing the punitive damages award to \$2.5 billion. The Court noted that although defendants' conduct was knowing and reckless, it was not intentionally malicious. Thus, a punitive damages award that corresponded with the highest degree of reprehensibility did not comport with due process, inasmuch as defendants' conduct fell in the middle of the fault continuum. The court concluded that a punitive damages-to-harm ratio of no more than 5 to 1 was proper.

Baker v. Exxon Mobil Corp. (In re Exxon Valdez)
United States Court of Appeals for the 9th Circuit
2006 U.S. App. LEXIS 31503
(Filed December 22, 2006)

This Court of Appeals opinion as to the issue of punitive damages arose out of the infamous 1989 grounding of the oil tanker *Exxon Valdez* in Alaska's Prince William Sound, which resulted in the spillage of crude oil into the surrounding waters. At the outset, the Court of Appeals noted that Exxon had already been punished in settled, separate litigation for dirtying the Sound, and that the plaintiffs' punitive damages case was saved from preemption and res judicata because their award vindicated only private economic and quasi-economic interests, not the public interest in punishing harm to the environment.

The Court also noted that resolution of the issue of punitive damages had been delayed since 1991 because of intervening Supreme Court decisions outlining the relationship of punitive damages to the principles of constitutional due process, which had caused the Court of Appeals to remand the matter twice to the district court for reconsideration of punitive damages in light of the evolving Supreme Court law.

The Court of Appeals thus re-analyzed the punitive damages award, guided by four recent United States Supreme Court cases -- *Pacific Mutual Life Insurance Co. v. Haslip*, 499 U.S. 1 (1991); *TXO Production Corp. v. Alliance Resources Corp.*, 509 U.S. 443 (1993); *BMW of North America, Inc. v. Gore*, 517 U.S. 559 (1996); and *State Farm Mutual Auto Insurance Co. v. Campbell*, 538 U.S. 408 (2003).

In *BMW v. Gore*, the Supreme Court delineated three factors that a court should consider in reviewing a jury's award of punitive damages: 1) the "reprehensibility" of the conduct (an award should reflect "the enormity" of the offense); 2) the disparity between the actual or potential harm to the plaintiffs flowing from the conduct, and the punitive damages assessed by the jury [a measure of the ratio between the punitive award and the amount of harm inflicted on the plaintiff(s)]; and 3) the difference between the punitives and the civil and criminal penalties authorized by the state for that conduct (to be used by reviewing courts in according substantial deference to legislative judgments concerning appropriate sanctions for the conduct at issue).

In *State Farm*, the Supreme Court again emphasized that the "most important indicium" of a punitive damages award's reasonableness was the relative reprehensibility of the defendant's conduct. However, *State Farm* significantly sharpened the reprehensibility analysis by instructing courts to further weigh five specific considerations: 1) whether the harm caused was physical as opposed to economic; 2) whether the conduct causing the plaintiff's harm showed "indifference to or a reckless disregard of the health or safety of others;" 3) whether the "target of the conduct" was financially vulnerable; 4) whether the defendant's conduct involved repeated actions as opposed to an isolated incident; and 5) whether the harm caused was the result of "intentional malice, trickery, or deceit, or mere accident." The Supreme Court did not rank these factors; it did, however, explain that the presence

of only one factor weighing in a plaintiff's favor might not be sufficient to support a punitive damages award, and that the absence of all five factors would make any such award "suspect."

Taking *BMW v. Gore* and *State Farm* into account, the Court of Appeals engaged in a lengthy and thorough analysis of the punitive damages review factors gleaned from those cases as they applied to the facts of this case. In assessing the reprehensibility of Exxon's misconduct, the Court of Appeals held that although Exxon had exhibited reckless misconduct in placing a known, relapsed alcoholic in command of a supertanker loaded with millions of barrels of oil, the misconduct did not warrant sanctions at the highest range allowable under the due process analysis. In addition, mitigating facts -- including Exxon's prompt action to clean up the oil and to compensate the plaintiffs for economic losses -- worked to mollify, in the Court's view, the reprehensibility of Exxon's original misconduct in economic terms. Relying on *State Farm*, the Court held that the district court's imposition of punitive damages of \$ 4.5 billion represented damages at the highest range, and was not warranted. The Court added that although a one-to-one punitives to harm ratio marked the upper limit in *State Farm*, the conduct at issue in this case was far more egregious and justified a considerably higher ratio; thus a five-to-one punitives to harm ratio was appropriate.

The Court of Appeals vacated the judgment of the district court and remanded the matter with instructions that the district court further reduce the punitive damages award to the amount of \$ 2.5 billion. In a terse final sentence, the Court stated: "It is time for this protracted litigation to end."

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COURT OF APPEALS SUSTAINS DISTRICT COURT'S APPORTIONMENT OF EQUAL LIABILITY IN CASE ARISING FROM A COLLISION OF A TANKER AND A DREDGE VESSEL

The Court of Appeals for the 5th Circuit affirmed the district court's finding of equal fault in a collision between two vessels in a channel. While acknowledging that findings of equal fault were rare in court cases, the Court of Appeals found that the district court had properly identified a variety of negligent acts by both parties which supported its finding of equal fault.

Stolt Achievement, Ltd., v. Dredge B.E. Lindholm
United States Court of Appeals for the 5th Circuit
447 F.3d 360
(Decided April 19, 2006)

Plaintiff ship owner appealed from a ruling of the United States District Court for the Southern District of Texas, complaining of various errors in the district court's resolution of its claims against Defendants, a dredge and its owner, in Plaintiff's action arising from the collision of its tanker and the dredge.

On October 21, 2002 a collision occurred between the chemical tanker STOLT ACHIEVEMENT ("tanker") and the dredge boat LINDHOLM ("dredge"). The tanker was headed inbound down the center of the Houston Shipping Channel. The dredge was traveling outbound, hugging the starboard side of the channel. All vessels in the Channel are required to navigate under the Uniform Inland Navigational Rules. As the vessels approached, the tanker contacted the dredge and the vessels agreed to a customary port-to-port, "one-whistle" passing. Approximately two minutes after the initial contact, the captain of the dredge lost control of the vessel, causing it to sheer port toward the tanker. The tanker captain attempted to contact the dredge captain; when reached on the third call, the dredge